

## § 233.38

State must promptly notify the recipient of his or her right to a fair hearing and his or her right to have assistance reinstated. A recipient has 10 days from the date of the notice to request a hearing in order to receive reinstatement.

[47 FR 5679, Feb. 5, 1982]

## § 233.38 Waiver of monthly reporting and retrospective budgeting requirements; AFDC.

(a) States may request waivers of the requirements at §§233.31–233.37 to promote compatibility with monthly reporting and budgeting requirements of the Food Stamp Act of 1977 as amended.

(b) The Secretary will not approve requests for waivers unless the information documenting the need for the waiver shows that the waiver would simplify administration of both programs and would not result in a net cost to the Federal government. Approvals for waivers will be for periods up to one year, after which time the State may request an extension of the waiver.

(c) Any decision by the Secretary not to approve a request for a waiver is not appealable.

[49 FR 35602, Sept. 10, 1984]

## § 233.39 Age.

(a) *Condition for plan approval.* A State plan under title I or XVI of the Social Security Act may not impose any age requirement of more than 65 years.

(b) *Federal financial participation.* (1) Federal financial participation is available in financial assistance provided to otherwise eligible persons who were, for any portion of the month for which assistance is paid:

(i) In OAA or AABD with respect to the aged, 65 years of age or over;

(ii) In AFDC, under 18 years of age; or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19.

(iii) In AB or AABD with respect to the blind, any age;

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(iv) In APTD or AABD with respect to the disabled, 18 years of age or older.

(2) Federal determination of whether an individual meets the age requirements of the Social Security Act will be made according to the common-law method (under which a specific age is attained the day before the anniversary of birth), unless the State plan specifies that the popular usage method (under which an age is attained on the anniversary of birth), is used.

(3) The State agency may adopt an arbitrary date such as July 1 as the point from which age will be computed in all instances where the month of an individual's birth is not available, but the year can be established.

[36 FR 3866, Feb. 27, 1971. Redesignated and amended at 47 FR 5678, Feb. 5, 1982]

## § 233.40 Residence.

(a) *Condition for plan approval.* A State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act may not impose any residence requirement which excludes any individual who is a resident of the State except as provided in paragraph (b) of this section. For purposes of this section:

(1) A resident of a State is one: (i) Who is living in the State voluntarily with the intention of making his or her home there and not for a temporary purpose. A child is a resident of the State in which he or she is living other than on a temporary basis. Residence may not depend upon the reason for which the individual entered the State, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or

(ii) Who, is living in the State, is not receiving assistance from another State, and entered the State with a job commitment or seeking employment in the State (whether or not currently employed). Under this definition, the child is a resident of the State in which the caretaker is a resident.

(2) Residence is retained until abandoned. Temporary absence from the State, with subsequent returns to the State, or intent to return when the purposes of the absence have been accomplished, does not interrupt continuity of residence.

(b) *Exception.* A State plan under title I, X, XIV, or XVI need not include an